IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION

CRIMINAL APPLICATION NO.697 OF 2006
IN
CRIMINAL APPEAL NO.505 OF 2006

Pandurang Vithal Karande and anr. ..Applicants.
Vs.
The State of Maharashtra. ..Respondent.

Mr. P.B. Naiknaware for the Applicants.
Mrs. P.H. Kantharia, A.P.P. for the State.

CORAM: J.N. PATEL &
R.S. MOHITE, JJ.
DATED :16TH JANUARY,2007.

P.C.

1. Heard.

2. This is an application for suspension of sentence by the applicants/accused who have been convicted by the Trial Court on a charge of having committed an offence under Section-302 read with 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.1000/- each, in default to suffer further rigorous imprisonment for six months and also for offence punishable under Section-307 read with 34, Section-324 read with 34 except offence under Section-504 read with 34 of the Indian Penal Code.

3. It is the prosecution case that on 12.6.2004 Srikant

Chandrakant Jagtap had gone to his house where his brothers noticed that his lips were swollen. When they enquired how he suffered the injury, he told them that he had gone to the shop of Nagesh Salgar at New Vasti Undegaon alongwith two others and while he was returning, accused Nos. 1 and 2 and one juvenile accused Samadhan assaulted him on account of not coming to their grocery shop for purchasing grocery. On the next day, they went to the house of accused persons to enquire as to why they assaulted their brother Srikant Jagtap, on which, one of the accused i.e. accused No.2-Santosh gave stick blow over the head of Satish Jagtap who in turn slapped him. when Srikant was to intervene in the quarrel at that time Pandurang took out knife from his pocket and hit on the chest of Srikant, due to which he fell down. Thereafter, accused No.1-Pandurang gave second blow below the stomach of the Srikant Jagtap. When Satish went near his injured brother Srikant, applicant-accused No.1 rushed towards him with knife and applicant No.2 with stick and said that they will not leave Srikant alive and therefore, Satish Jagtap fled away from the scene. In the mean time, other witnesses gathered on the spot, on which, accused No.1-Pandurang inserted knife in the scrotum of Satish Jagtap and the accused No.2-Santosh and juvenile accused-Samadhan assaulted Ganesh, Rajesh and one Govind

by sticks and swords on their heads. Ultimately, Suresh Gund, Balu Gund and Anantrao Jagtap moved the injured to the Government hospital, where, he succumbed to his injuries.

4. It is the contention of the learned counsel appearing for the appellants that this is a case which would fall within exception and at the most offence under Section 304 Part II is made out, as the incident occured out of grave and certain provocation. Alternatively, it is submitted that, if at all, the prosecution case is accepted, the appellants at the most can be said that they have exceeded their right of private defence. Therefore, in the facts and circumstances, they may not be held guilty for offence under Section-302 of the Indian Penal Code and the court may suspend the substantive sentence of the appellants till their appeal is finally decided.

5. The learned A.P.P. objects for suspension of sentence on the ground that the accused have been convicted not only under Section-302 read with 34 but also under Section-307 read with 34 of the Indian Penal Code for assaulting others and armed with weapons like stick, knife and sword. The Trial Court has found that their case do not fall either on the exception or they

acted in right of their private defence. Therefore, their sentence cannot be suspended.

6. With the assistance of the learned counsel for the appellant and the learned A.P.P. who examined the evidence for the limited purpose of assessing whether the case of the appellants can be considered for suspension of sentence and prima facie, we do not find any substance in the submission of the learned counsel for the appellants that the case of the appellants would fall under Section-304 Part-II and therefore, it is not a fit case for grant of suspension of sentence. Hence, application is rejected.

(J.N. PATEL, J.)

(R. S. MOHITE, J.)